

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 14326 of 2004

Between:

Syed Riazuddin,

S/o Syed Yousufuddin, Aged about 50 years, Occ: Service,

R/o 14-1-164, Seetharambagh, Hyderabad.

..... PETITIONER

AND

1. The Deputy Registrar of Cooperative Societies, (Arbitration), City Circle, Moasam Jahi Market Lane, Hyderabad.
2. The Aryan Cooperative Urban Bank Limited, Nallakunta, Hyderabad.
3. The A.P. Cooperative Tribunal, Chandravihar, Moazam Jahi Market Lane, Hyderabad.
4. The Divisional Cooperative Officer, Golkonda Division, Near Exhibition Grounds, Nampally, Hyderabad.
5. C. Yadaiah, Attender, O/o E.E., R & B, ABD, Basheerbagh, Hyderabad.
6. B. Babu Rao, Attender, O/o D.A.O., CBD, Basheerbagh, Hyderabad.

(R-5 and R-6 are not necessary parties)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the orders of the third respondent passed in I.A.No.659 of 2004 in CTA SR No.2908 of 2004, dated 03-06-2004 as illegal and arbitrary and consequently set aside the orders of first respondent in proceedings No.ARC No.1277/97-J1 dated 12-03-1999 and direct the respondents 1 to 4 not to initiate any coercive steps pending finalisation of appeal on the file of the third respondent.

Counsel for the petitioner: Mr. C.V. Bhaskar Reddy.

Counsel for the respondents 1 to 4: G.P. for Cooperation.

The Court, at the admission stage, made the following:

ORDER:

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This writ petition is filed aggrieved by the order of the A.P. Cooperative Tribunal, Hyderabad-third respondent, dated 03-06-2004, in I.A.No.659 of 2004 in CTA SR No.2908 of 2004.

The petitioner is working as Junior Technical Officer in the office of the Executive Engineer, PWD, (R&B), Hyderabad. He availed a loan of Rs.10,000/- on 11-03-1994 from the second respondent-Bank. He states that the entire loan amount has already been recovered by the Authorised Officer of the second respondent-Bank within two years from the date of sanction of the loan. However, proceedings under Section 62 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') have been initiated by the first respondent against him at the instance of the second respondent-Bank. The petitioner filed a written statement and contested the claim. However, without notice of hearing, an award has been passed for recovery of the alleged loan amount of Rs.20,409/- including interest at the rate of 19 per cent per annum. In pursuance of the same, proceedings have been initiated for attachment of immovable properties of the petitioner for recovery of the alleged loan amount. The petitioner states that soon after he came to know about the said award, he preferred an appeal before

the A.P. Co-operative Tribunal, Hyderabad-third respondent in CTA SR No.2908 of 2004 along with I.A.No.659 of 2004 seeking stay of the *ex parte* award. The learned Tribunal passed a conditional order in I.A.No.659 of 2004 directing the petitioner to pay half of the decretal amount within two months from the date of said order i.e., 03-06-2004. Aggrieved by the same, the present writ petition is filed.

Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

The learned Counsel for the petitioner contends that since a written statement was filed by the petitioner, the first respondent being a quasi-judicial authority ought to have decided the matter on merits instead of passing an *ex parte* award. He further contends that the award which is under challenge in the Appeal, on the face of it being arbitrary and illegal, the third respondent ought to have granted stay without imposing any conditions and ought to have taken up the main Appeal for consideration.

Since the validity of the award is the subject matter of the appeal pending before the third respondent, I am not inclined to express any opinion on the merits. However, so far as granting of interim stay pending the appeal is concerned, Rule 11 of the A.P. Cooperative Tribunal (Procedure) Rules, 1994(for short 'the Rules'), mandates that where the impugned order before the Tribunal relates to misappropriation of amounts and sanction of benami loans, no interim order in the nature of stay or suspension for a specified period shall be issued unless the applicant produces a cash deposit of not less than 50 per cent of the amount involved. However, in other cases as per Rule 12 of the Rules, the Tribunal is competent to grant an order of stay without any such condition, if it is satisfied on the facts and circumstances of the case that it is just and reasonable to stay the operation of the impugned order till the disposal of the appeal.

In the case on hand, since the amount in question does not

relate to misappropriation of amounts or sanction of benami loans, Rule 11 is not attracted and it is not mandatory to direct the appellant to deposit half of the amount involved. Hence, the order impugned to the extent of directing payment of half of the decretal amount cannot be sustained. Having regard to the facts and circumstances of the case, I am of the view that it would be appropriate to stay the operation of the Award dated 12-03-1999 till the disposal of the Appeal without insisting on payment of half of the decretal amount.

Accordingly, the impugned order shall stand modified granting stay of operation of the Award dated 12-03-1999 till the disposal of the Appeal and the writ petition is disposed of with a direction to the third respondent to dispose of the appeal in CTA SR No.2908 of 2004 as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs.

13-08-2003

ghn

To

1. The Deputy Registrar o Cooperative Societies, (Arbitrarion), City Circle, Mohanja Market Lane, Hyderabad.
2. The Aryan Cooperative Urban Bank Limited, Nallakunta, Hyderabad.
3. The A.P. Cooperative Tribunal, Chandravihar, Mohanja Market Lane, Hyderabad.
4. The Divisional Cooperative Officer, Gonconda Division, Near Exhibition Grounds, Nampally, Hyderabad.
5. Two CC copies to the Government Pleader for Cooperation, High Court of A.P., Hyderabad (o.u.t).
6. Two CD copies.